HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2421 OF 2005
AND
WRIT PETITION NO. 2422 OF 2005

M/s. Iminex Holdings &
Investments & Ors. ..Petitioners.

Versus.

Mr. Bhupatbhai Kalyanji Koticha
& Anr. ..Respondents.

Shri. S. V. Marwadi for the Petitioners.

Shri. Bhavin Bhatia for the respondent No.1.

Smt. M. H. Mhatre A.P.P. for the Respondent - State.

CORAM: A.M. KHANWILKAR, J.
DATE : DECEMBER 15, 2005.

P.C.

1. Heard counsel for the parties. Rule. Rule made returnable forthwith by consent. Shri. Bhavin Bhatia waives notice for Respondent No.1. Smt. M.H. Mhatre, A.P.P. waives notice for Respondent - State. By consent taken up for final disposal forthwith, as short question is involved.

2. This petition takes exception to the order passed by the Metropolitan Magistrate 31st Court, at Vikroli, Mumbai dated 2nd December, 2004, rejecting the discharge application filed by the Petitioner. The application has been rejected mainly on the ground that

the remedy of discharge is not available in view of the decision of the Apex Court in **Adalat Prasad Vs. Ruplal Jindal & Ors.** The grievance of the Petitioners is that the Trial Court misapplied the decision of the Apex Court to the present case. The present case is warrant triable case and not a summons case, as was the case before the Apex Court in Adalat Prasad (Supra). There is substance in this grievance. The Petitioners are tried for offence punishable under section 420 read with 140 of the Indian Penal Code, which is a warrant triable case. If it is so, the Trial Court was obliged to consider the discharge application on its own merits in accordance with law by virtue of provisions of the Code of Criminal Procedure. Hence, this petition succeeds. Rule made absolute with directions to the Trial Court to consider the discharge application preferred by the Petitioners as expeditiously as possible, preferably within three months from the receipt of writ of this order from this Court. In the event the discharge application is dismissed, the Trial Court may proceed to frame the charges after following the necessary procedure and proceed with the trial to be decided expeditiously, as Respondent-Complainant is a Senior Citizen. Ordered accordingly.

(A.M.KHANWILKAR, J.)